

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

PAULA PAGONAKIS, ) CASE NO. 06-027 SLR  
 )  
 Plaintiff, )  
 v. )  
 )  
 EXPRESS, LLC, a/k/a )  
 LIMITED BRANDS, INC., )  
 )  
 Defendant. )

**AFFIDAVIT OF DAVID A. CAMPBELL**

STATE OF OHIO )  
 ) SS  
 COUNTY OF CUYAHOGA )

I, David A. Campbell, being duly cautioned and sworn, state as follows:

1. I am a partner with the law firm of Vorys, Sater, Seymour and Pease LLP. This law firm is lead counsel for the Defendant, Express, LLC ("Express"), in the captioned-lawsuit.
2. Prior to commencing this lawsuit, Plaintiff Paula Pagonakis ("Plaintiff") filed an administrative charge of discrimination (the "Charge") with the Equal Employment Opportunity Commission (the "EEOC"). This law firm represented Express in connection with her administrative charge.
3. Plaintiff's Charge asserted one claim of failure to accommodate under the Americans with Disabilities Act (the "ADA"). The Charge did not assert that Plaintiff had been constructively discharged nor did it assert that she had been harassed or retaliated against.

**EXHIBIT**

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4. On or about April 23, 2004, Express submitted its position statement responding to the Charge. Consistent with the Charge, the position statement only addressed Plaintiff's allegation of failure to accommodate.

5. On or about October 11, 2005, Express received Plaintiff's Amended Charge. The cover page to the Amended Charge added the following comments: "Amended Charge for your records. Charge was amended prior to being dismissed. No response is required." A copy of the fax cover page is attached hereto.

6. As such, Express never had the opportunity to respond to the Amended Charge.

7. In a letter of October 31, 2005, Express objected to the Amended Charge, informing the EEOC that Express' position statement to the charge did not address the resignation, the subsequent requests for information did not address the resignation, and the resignation was never discussed nor reviewed at the Fact Finding Conference held prior to the dismissal of the Charge.

8. In connection with this lawsuit, Express submitted a Freedom of Information Act ("FOIA") Request to the EEOC and received the EEOC's administrative file. The file does not contain any permanent notice of change of address for Plaintiff.

9. EEOC Documents did show that the EEOC contacted Plaintiff on or about September 30, 2005 and told her that her right to sue letter was forthcoming. There is no indication that Plaintiff informed the EEOC to send the right to sue letter to any other address than the one contained in the Amended Charge.

10. As part of discovery, Plaintiff produced a copy of an envelope in which her right to sue letter was sent bearing the postmark of October 5, 2005 and the address 140 Back Creek Drive, Middletown, DE 19708. This is the same address Plaintiff verified as correct six days

earlier. The envelope reveals that it was forwarded to another address in Virginia on October 11, 2005.

The above is true, correct, and based on my personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



David A. Campbell

Sworn to and subscribed in my presence this 23<sup>rd</sup> day of April 2007.

  
\_\_\_\_\_  
Notary Public

**BRIDGET ANN TULETA**  
NOTARY PUBLIC • STATE OF OHIO  
Recorded in Cuyahoga County  
My commission expires May 17, 2008

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Philadelphia District Office  
The Bourse, Suite 400  
21 South Fifth Street  
Philadelphia, PA 19106-2515

TELECOPIER MESSAGE COVER PAGE

**TO:** David A. Campbell, Esq.  
**Firm:** Vorys, Sater, Seymour and Pease, LLP  
**Fax:** 216-937-3779

**From:** George J. Marinucci, Investigator  
**Phone:** 215-440-2636 (Direct-dial)  
**Fax:** 215-440-2604

**Date:** 10/11/2005 **Total Pages & Cover:** 3

**Subject:** Paula Pagonakis v. Limited Brands, Inc.  
EEOC Charge Number 171-2004-01038

Comments:

***Amended Charge for your records.  
Charge was amended prior to being dismissed.  
No response is required.***